IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.Criminal Revision Petition No. 482/2004

(Dev Kishan & Ors Vs. State of Rajasthan)

Date of order : 11.07.2006

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Pankaj Bohra for the petitioners.

Mr. Ashok Upadhyay, Public Prosecutor.

BY THE COURT:-

By the instant criminal revision petition under Section 397 r/w Section 401 Cr.P.C., the petitioners have assailed the order dated 25.3.2004 passed by Sessions Judge, Rajsamand (for short 'the revisional court' hereinafter) in Criminal Revision No.01/2003, whereby the revision petition filed by the non-petitioner State was allowed and the order dated 20.4.1998 passed by Chief Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Case No.292/97 discharging the petitioners for the offences under Sections 420, 467, 468, 471 and 120-B IPC was set aside and the matter was remanded to the trial court for a fresh order.

I have heard learned counsel for the petitioners and public prosecutor for the State. Perused the orders of the revisional court as well as of the trial court and the record.

The trial court by a detailed and well reasoned order dated 20.4.1998 considering the entire material placed before it, came to the conclusion that there is no ground to presume that the petitioners have committed the offences noticed above and accordingly they were discharged.

The facts and circumstances giving rise to the instant criminal revision petition are that petitioner No.7 Chunilal who was original Khatedar of the land bearing Khasra No.1775/753 measuring 4 bighas, initially gave a no objection certificate in favour of Ashok Kumar complainant on 20.9.91 and subsequently it is alleged that he entered into an agreement with regard to that very land in favour of Dev Kishan petitioner No.1 by agreement dated 28.4.1993 agreeing to sell the land in question for a sum of Rs. 1,71,001 and received an advance amount of Rs. 10,001/- and it was agreed to get the land registered within two months of the receipt of the remaining amount. Subsequent thereto, on 20.10.1993, petitioner No.7 Chunnilal executed a power of attorney in favour of petitioner No.1 Dev Kishan authorising him to cultivate or to give it to

others for cultivation or to mortgage or sell and execute the sale deed on his behalf. On the basis of power of attorney dated 20.10.1993 it is alleged that petitioner Dev Kishan executed a sale deed in favour of petitioner No.6 Rajendra Prasad and got the documents registered. The allegation of complainant Ashok Kumar is that the power of attorney has been forged by the petitioner No.6. The specimen signature and handwriting of Chunnilal were taken by the police during the investigation and sent to the State Forensic Science Laboratory for handwriting expert's opinion. The Forensic Science Laboratory's report dated 29.9.1997 shows that as a result of very careful and thorough scientific examination of the documents referred to overleaf arrived at the conclusion that the disputed signatures marked as Q2 to Q5, Q9 and Q10 are in the handwriting of the same person who made the standard signatures marked as A1 to A26. Thus, in the opinion of the handwriting expert the disputed signatures as also the admitted signatures of Chunni Lal were found to be same. In the circumstances therefore, there is no forging of power of attorney.

From the facts noticed above, it is a dispute of civil nature. If the complainant has any grievance to get the agreement enforced, the remedy of civil suit in a civil court is always there. There is prima-facie no evidence showing an

element of cheating, forging of documents or using of forged documents as genuine one. Prima-facie, neither there is evidence of cheating nor the forging of document or using the same as genuine. In the circumstances, therefore, the revisional court fell in error in not taking note of the conclusion arrived by the trial court by detailed and well reasoned order.

Consequently, the revision petition filed by the petitioners is allowed. The order impugned dated 25.3.2004 passed by the revisional court is set aside and the order passed by the trial court dated 20.4.1998 is restored. Stay petition stands disposed of. Record of the trial court be returned forthwith.

(H.R.PANWAR), J.

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